APPENDIX A

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
JOSEPH ROBERT STEVEN BROSSARD,
Defendant-Appellant.

No. 23,390

[February 17, 1970]

Appeal from the United States District Court for the Central District of California

Before: HAMLIN, ELY and HUFSTEDLER, Circuit Judges

PER CURIAM:

Appellant Joseph Brossard was indicted and convicted for his failure to report for induction in violation of 50 U.S.C. App. § 462. Appellant contends that the local board improperly processed his conscientious objector claim. The United States District Court for the Central District of California, Judge Albert Lee Stephens, Jr., rejected this defense, and appellant filed the instant appeal to this court which has jurisdiction under 28 U.S.C § 1291.

The Notice to Report for Induction was sent appellant on October 26, 1966, ordering appellant to report for induction on November 15, 1966. On November 10, 1966, appellant submitted a completed Form 150, which he contends constitutes a prima facie case for conscientious objector status. However, 32 C.F.R. § 1625.2 provides that

"the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction . . . unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant has no control." For the purposes of this case it makes no difference whether the registrant's views on conscientious objection "crystalized" before[1] or after[2] the notice to report for induction was sent. In either situation there is no change in status "resulting from circumstances over which the registrant has no control." See *Dugdale* v. *United States*, 389 F.2d 482 (9th Cir. 1968) and *Ehlert* v. *United States*, ... F.2d..... (No. 21930) (9th Cir. February 2, 1970) (*en banc*). As section 1625.2 controls the processing of appellant's CO claim, and by virtue of this regulation the local board in the instant case was under no obligation to consider the claim first presented after the notice of induction had issued, the failure of the local board to reopen and grant a personal interview is not a denial of procedural due process.[3]

Affirmed.

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1. Contention of the government.

2. Contention of the appellant.

3. In addition, appellant mentions the fact that the local board clerk signed the order to report for induction, and that there was no showing that he was authorized by the local board pursuant to 32 C.F.R. § 1604.59 to sign such orders. Any claim of error based on the clerk's signing of the order to report for induction is foreclosed by *United States* v. *Doran*, ... F.2d ..... (No. 23368) (9th Cir. Nov. 10, 1969), and *United States* v. *Stark*, ... F.2d ..... (No. 22994) (9th Cir. Nov. 28, 1969) (*en banc*).

APPENDIX B

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOSEPH ROBERT STEVEN BROSSARD, Defendant-Appellant.	No. 23390

Judgment

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Feb. 17, 1970.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Monday, March 30th, 1970
Before: HAMLIN, ELY and HUFSTEDLER, Circuit Judges

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed March 2, 1970 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

APPENDIX D

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

CRIMINAL PROCEEDINGS AND CONDEMNATION OF PROPERTY

[SECTION 1.] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

Proposed September 25, 1789; ratified December 15, 1791.

Congress declared in Section 456 (j) of the Universal Military Training and Service Act, 50 U.S.C. App., that:

> "Nothing contained in this Title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

Congress declared in Section 1 of the Act: "Policy and intent of Congress:

> "(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Section 1625.2 of the Selective Regulations (32 C.F.R. § 1625.2 (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

> *"When registrant's classification may be reopened and considered anew.*—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was

classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; *provided,* in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."